

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARK A. ROLOFF,)	
)	
Plaintiff,)	4:09CV3178
)	
v.)	
)	
BNSF RAILWAY COMPANY,)	MEMORANDUM AND ORDER
)	
Defendant.)	

In the parties' proposed pretrial conference memorandum, the defendant objected to (a) through (j) of the plaintiff's allegations of negligence as beyond the scope of plaintiff's complaint. See filing no. [52](#), at "Controverted and Unresolved Issues", ¶ 8.

At the pretrial conference, the defendant withdrew its objections to (a) through (h), but as to (i) and (j), agreed to further consider its objections after reviewing the deposition of Michael Shinnick. Mr. Shinnick's testimony was cited by the plaintiff as his basis for allegations (i) and (j). The allegations of negligence raised in (i) and (j) were not mentioned or within the scope of alleged negligence raised in the plaintiff's complaint. The defendant was ordered to advise the court within five days as to whether, upon review of Mr. Shinnick's testimony, its objections to (i) and (j) are withdrawn. See filing no. [52](#), at "Controverted and Unresolved Issues", ¶ 8 at pp. 2-4.

The defendant promptly responded and has advised the court it will not withdraw its objections to paragraph 8 (i) and (j) of the "Controverted and Unresolved Issues" within the Pretrial Conference order. Filing No. [52](#). This issue must be resolved before trial.

Accordingly,

IT IS ORDERED:

- 1) On or before October 28, 2010, the plaintiff shall submit to the undersigned magistrate judge a copy of the deposition of Michael Shinnick, along with a statement or letter that references, by page and line, the portions of that deposition

he relies on in support of the allegations in paragraph 8 (i) and (j) of the “Controverted and Unresolved Issues” set forth in the Pretrial Conference Order.¹

- 2) Defense counsel’s response to the plaintiff’s submission shall be provided to the court on or before November 4, 2010.
- 3) The parties submissions will be docketed as court exhibits, and thereby made part of the record of this case, when the court enters its ruling on defendant’s objections to allegations (i) and (j).

DATED this 22nd day of October, 2010.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge

¹The parties’ submissions can be made in any manner deemed most efficient, including by email to zwart@ned.uscourts.gov, with a copy provided to opposing counsel.